

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
cr

SPECIAL CIVIL APPLICATION No 13682 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 and 2 Yes
3 to 5 No

MOHMA D YUSUF BACHLA DECD. BY HIS HEIRS

Versus

DEPUTY COLLECTOR

Appearance:

MR GR SHAIKH for Petitioners
Mr.V.B.Garania, learned A.G.P.
for Respondent Nos. 1 and 2
MR AJ PATEL for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 27/01/98

ORAL JUDGEMENT

1. Rule. Mr. Garania, learned A.G.P. waives service of rule on behalf of respondents Nos.1 and 2 and Mr. A.J. Patel, learned counsel, waives service of rule on behalf of respondent No.3. Since there is already an order of this Court that the matter will be finally heard

and decided at admission stage, the matter was taken up for final hearing right today.

2. The dispute originally arose out of the land admeasuring 1 Acre 5 Gunthas situated in the sim of village Godhra S.No.523/1. After independence and the partition of India, on account of civil disturbances, large number of people migrated from one dominion to other leaving behind their properties. One Shri Ibrahim Rahim Jini and Ismail Rahim Jini went to Pakistan and Rabia Jini stayed in India. For the efficient management and administration of the evacuee property, Administration of Evacuees Property Act, 1950 was enacted by the Parliament. Under the said Act, the custodian in India has to declare the interest of the evacuee in the immovable properties left by Muslims in Bharat as evacuee property. For this purpose Evacuees Interest (Separation) Act, 1951 was passed by the Parliament making special provisions for the separation of the interest of evacuees in their properties. The custodian of evacuee property by his order dated 19.10.65 declared S.No.523/1 at Godhra admeasuring 1 Acre 5 Gunthas as evacuee property. Out of the entire S.No.523/1 admeasuring 45 Gunthas, the Central Government by its Notification dated 25.5.1955 acquired 2/3rd share from the said property. The share of the evacuee was taken to be 30 Gunthas. The said 30 Gunthas was then transferred in favour of respondent No.3 i.e.. Mohmdsaid Ibrahim Bhatuka and a deed dated 24.1.72 was executed. According to the petitioners, the share of Rabia Rahim, admeasuring 15 Gunthas out of S.No.523/1 i.e. the land other than 30 Gunthas, as aforesaid, was also treated as evacuee property and the petitioners made a claim before the Collector and Deputy Custodian of Evacuee Property of Panchamahals at Godhra. The matter was referred to the Competent Officer under Evacuee Interest (Separation) Act and the Competent Officer by his order dated 17.10.84 directed the petitioners to have the share of the evacuee admeasuring 15 Gunthas of the land bearing S.No.523/1 Paiki separated from the evacuee property and the Competent Officer also executed a sale deed in favour of the petitioners on 1.11.84 in pursuance of the above referred order dated 17.10.84.

3. While these proceedings had taken place with regard to the evacuee property, relating to 15 Gunthas of land, the proceedings under S.32(G) of Bombay Tenancy And Agricultural Lands Act, 1948 were initiated on 8.6.72 by Mohmdsaid Ibrahim Bhatuka i.e. respondent No.3. In these proceedings i.e. Tenancy Case No.20 of 1973 the Mamlatdar, Godhra passed an order on 2.7.73 fixing the

purchase price of the aforesaid land. Against this order dated 2.7.73, Tenancy Appeal No.41 of 1973 was preferred by respondent No.3 before the District Deputy Collector, Godhra. One more Tenancy Appeal No.31 of 1973 was preferred before the District Deputy Collector by Abdual Rahim Bhatuka. The District Deputy Collector remanded the matters to the Mamlatdar. Appeal No.41 of 1973 was decided on 30.4.74. The Mamlatdar, Godhra passed the order dated 23.9.76 in Tenancy Case No.854 of 1975. The Deputy Collector passed the order dated 26.6.77 upholding the order passed by the Mamlatdar on 23.9.76. Against this order, Revision Application was preferred and the Gujarat Revenue Tribunal allowed the Revision setting aside the orders passed by the ALT and Deputy Collector. The respondent No.3 was declared as the tenant, who was deemed purchaser on 13.12.60 with regard to the land in question admeasuring 15 Gunthas out of S.No.523/1. Against this order dated 15.11.77 passed by the Gujarat Revenue Tribunal, the matter was taken to the High Court by way of Special Civil Application by Abdul Rahim Bhatuka and six others. Mohmed Yusuf Bachla and others were parties in this Special Civil Application No.1864 of 1977. It was stated before this Court that the matter had been settled between the parties and the permission was sought to withdraw the petition. Such permission to withdraw the petition was granted and the petition was disposed of as withdrawn on 16.4.84.

4. The Mamlatdar then took up the matter for fixing the purchase price and passed a detailed order on 15.7.87 in Tenancy Case No.502 of 1985. It will be pertinent to notice at this stage that at the time when these proceedings were taken up by the Mamlatdar, the order dated 17.10.84, passed by the Competent Officer under the Evacuee Properties Act, on which the petitioners had placed reliance, was very much in existence and it may be further noticed that in these proceedings before the Mamlatdar, Mohmad Yusuf Bachla and others with him were already parties. The Deputy Collector, Godhra then passed an order on 10.2.89 setting aside the order of the Mamlatdar fixing the purchase price and remanded the matter back to him. Against this remand order passed by the Deputy Collector, the matter was taken to the Gujarat Revenue Tribunal by Mohmadsaid Ibrahim Bhatuk. The Gujarat Revenue Tribunal decided the Revision Application No.TEN.B.A. 216 of 1989 on 12.12.94. This order dated 12.12.94 passed by the Gujarat Revenue Tribunal is sought to be challenged through this Special Civil Application.

5. I have heard learned counsel for both the sides. It would appear from various orders, to which reference

has been made hereinabove, and the affidavit-in-reply dated 20.1.95 filed by respondent No.3 that the petitioners' side i.e. Mohmad Yusuf Bachla and others were throughout parties in all the effective proceedings including the order which was passed by the High Court in the Special Civil Application, to which reference has been made hereinabove. It has to be agreed on all hands that while passing the order dated 15.11.77 the Gujarat Revenue Tribunal had declared the respondent No.3 to be the tenant- as a deemed purchaser. Thereafter, the only task to be undertaken was consequential before the Mamlatdar so as to fix the purchase price. In these proceedings, the petitioners again wanted to raise the question and enter into a lis with the respondent No.3 with regard to the tenancy. It may be made clear that the statement was made before the High Court when the order passed on 16.4.84 that the matter had been settled between the parties and, thereafter, even if it is found that the order was passed with regard to the evacuee property in October 1984 with regard to the petitioners, such order was there even when the subsequent proceedings, were held before the Mamlatdar or Deputy Collector or the Gujarat Revenue Tribunal and the petitioners were a party to it. The petitioners could not now enter into a lis afresh with regard to the status of the respondent No.3 as a tenant, which had been declared by the Gujarat Revenue Tribunal while passing the earlier order dated 15.11.77. Now the order, which has been passed by the Gujarat Revenue Tribunal on 12.12.94 clearly goes to show that the petitioners did not raise any objection or question that the Gujarat Revenue Tribunal had no jurisdiction. The Gujarat Revenue Tribunal's judgment declaring the respondent No.3 as a tenant in respect of the disputed land of 15 Gunthas on 15.11.77 became final and conclusive with the decision of the High Court in the Special Civil Application on 16.4.84. It was only the consequence that the Mamlatdar and the ALT was to fix the purchase price under the Tenancy Act in respect of 15 Gunthas of land. The Gujarat Revenue Tribunal has also considered all the matters in detail and the validity of the orders which were challenged before it including the ground that the earlier order passed by the Gujarat Revenue Tribunal was a nullity. Even if an order is a nullity, the same is required to be challenged and required to be declared as such by some higher or superior Court. In the facts of this case, the matter was taken to the High Court after the earlier order of the Gujarat Revenue Tribunal dated 15.11.77 and the dispute was settled between the parties with the order passed by the Court on 16.4.84. As a matter of fact, the issue of tenancy had been raised

again and the same was dealt with and, thereafter, the purchase price was fixed and thus the Gujarat Revenue Tribunal's order became final and conclusive.

6. Even otherwise, the learned counsel for the petitioners failed to show as to how this order dated 12.12.94 passed by the Gujarat Revenue Tribunal suffers from any error of fact or law or any other legal infirmity so as to warrant any interference by this court in this writ of certiorari. Neither any of the findings arrived at by the Tribunal suffer from any error of law or of fact and the earlier order of the Gujarat Revenue Tribunal passed on 15.11.77 had already attained finality and hence I do not find any case worth interference. This petition has no substance. The same is hereby dismissed. Rule is hereby discharged. Interim relief stands automatically vacated. No order as to costs.